No. 81-6352

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

WILLIAM HENRY HANCE,

Petitioner,

v.

WALTER D. ZANT, WARDEN,

Respondent.

On Petition for a Writ of Certiorari
to the Superior Court of Butts, County, Georgia

APPENDICES

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IN THE SUPERIOR COURT OF MUSCOGEE COUNTY

G E O R G I A

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STATE OF GEORGIA,	)	
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	INDICTMENT NO. 39654
	)	
WILLIAM HENRY HANCE,	)	
	)	
DEFENDANT.	)	
- - - - - - - - - - - - - - - -	)	

HEARING BEFORE

THE HONORABLE KENNETH FOLLOWELL,

JUDGE

COLUMBUS CONSOLIDATED GOVERNMENT CENTER

COLUMBUS, GEORGIA

November 27,1978

* * * * * * * * * *

A P P E A R A N C E S

THE HONORABLE WILLIAM SMITH, District Attorney for the Chattahoochee Judicial Circuit of Georgia, Columbus, Georgia, appearing on behalf of the State of Georgia; and

THE HONORABLE RICHARD O. SMITH AND THE HONORABLE WALTER JOHNSON, Public Defenders, Columbus, Georgia, appearing on behalf of the defendant.

REPORTED BY:

SHARI McMILLAN
Official Court Reporter
P.O. Box 85
Columbus, Georgia

P R O C E E D I N G S

THE COURT: All right. The Court calls the case of The State of Georgia versus William Henry Hance, Indictment Number 39654, charges of murder, criminal attempt, theft by extortion. A series of motions have been filed on behalf of the defendant who is here represented by The Honorable Richard O. Smith and Walter Johnson. Appearing on behalf of The State is the Honorable William J. Smith, District Attorney.

The motions are as follows: Motion for complete recordation of all proceedings, motion for individual voir dire and sequestration of jurors during voir dire, motion to prohibit jury dispersal, motion to compel disclosure, motion to allow defendant to participate at trial as co-counsel, motion for change of venue.

Are you ready for the movant, Mr. Smith?

MR. RICHARD SMITH: I am, Your Honor.

THE COURT: Mr. Smith for The State?

Mr. WILLIAM SMITH: I am ready, Your Honor.

THE COURT: All right.

MR. RICHARD SMITH: Your Honor, I would like the record to show William Henry Hance is in attendance this morning at this hearing. The primary purpose of this hearing this morning is to go through some motions

which have already been heard under Judge Land, but since the case has been reassigned to The Court, I would like to enter them into the record. I think Mr. William Smith and I are in agreement, if The Court is also in agreement. The first motion is the motion for complete recordation of all proceedings. Mr. Smith, do you have any objections?

MR. WILLIAM SMITH: No, I have no objections to that, Your Honor.

THE COURT: All right. This is a motion for an order directing the court reporter to take and record all hearings on motions, et cetera which is stated clearly in the motion, if there is no objections to the motion, than it is granted.

MR. RICHARD SMITH: The second motion is the motion for individual voir dire and sequestration of the jurors during the voir dire. This is your standard motion in a death penalty case. Any objections?

MR. WILLIAM SMITH: We have no objections to that, Your Honor.

THE COURT: All right, it is granted without objections.

MR. RICHARD SMITH: The next motion is the motion to prohibit jury dispersal during the trial from the time they are sworn in to the completion of the

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proceedings. Any objections to that?

MR. WILLIAM SMITH: None.

THE COURT: Likewise granted without objection.

MR. RICHARD SMITH: The next motion is the motion to compel disclosure. I will state that The State to the best of my knowledge has complied with this request on it's own, but we would request that the motion be granted.

MR. WILLIAM SMITH: Your Honor, If I may, we have done that and we will continue to. If new evidence should come to light between now and the time of trial. However, we would ask the Court not to enter an order granting that motion. No such motion or requirement is provided for or exempt under the Georgia law. If nothing else, we don't want to set a precedent.

MR. RICHARD SMITH: Your Honor, this is the basic Brady Motion, called for in the Brady decision.

MR. WILLIAM SMITH: If it is a Brady Motion as such, then we don't object, but just to open files, we do. Of course, anything in it that is exculpatory or mitigatin or in extenuation, certainly if The Court wishes us to, issue an order, the defense counsel will take an order to that effect. That's well and good.

THE COURT: All right, sir. If that should be raised by separate motion, we would take it up at that time. If there are any problems in securing that, which

you have asked for, but I agree with the District Attorney with respect to the motion that you have filed here. And the form which it is filed, I don't think the law does provide for discovery of this nature to be ordered by The Court.

MR. RICHARD SMITH: Can we ask for the granting of it within the confines of the Brady case?

MR. WILLIAM SMITH: I don't have any objections to that.

THE COURT: All right. Then I wish you would prepare an order to that effect and we will grant the motion and those terms.

MR. RICHARD SMITH: Next motion is a motion to allow the defendant to participate at his trial as co-counsel and I would like to preface this, Your Honor, if I might, with a couple of remarks. We have had our requests. Mr. Smith has sent Mr. Hance to the Central State Hospital in Milledgeville, Georgia, with the evaluation and examination and it is my understanding from the information we received from them that it was their feeling that he was competent to aid and assist us as co-counsel and as a defendant in the case. We have also had Mr. Hance examined by Mr. Lewis Lieberman, who is a psychologist here in Columbus. Mr. Lieberman suggested that there may be some character disorder

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that might be further examined to determine Mr. Hance's present mental status. However, he talked with Mr. Hance and he has requested that no further psychiatric examination be made or taken. He feels this to be a rational request and in view of what Mr. Lieberman has said and what they also said has been done at Central State Hospital, it seems like he is competent to make this request or he has requested that he be allowed to participate as we counsel in this case and to handle the primary body of the proceedings. Is that correct, Mr. Hance?

MR. HANCE: Yes.

MR. RICHARD SMITH: So we ask The Court to grant that motion. We have marked co-counsel out and said that he be allowed to participate as lead counsel.

THE COURT: Do you have any objection to Mr. Smith participating as co-counsel?

MR. HANCE: No, sir, I do not.

THE COURT: Does The State wish to be heard?

MR. WILLIAM SMITH: Yes. I would ask that The Court, for the purposes of this, there is no question that a man can represent himself. Of course, as The Court knows, they have that right, but I would ask that in light of this, of course, any case is

important, where one's liberty might be at stake, but in light of this case, if The Court would direct [illegible] inquiries for the purpose of the record to advise him of his right to have counsel, and assure the Court that he does wish this, realizing the potential consequences and all. I ask The Court, at least, ask Mr. Richard Smith to sit with him throughout the course of the trial and be available to advise him.

THE COURT: Mr. Hance, have you ever witnessed a trial in progress before, trial of a criminal case?

MR. HANCE: Yes.

THE COURT: Are you aware that this is what is termed a capital case in which the maximum penalty might call for execution?

MR. HANCE: Right, sir.

THE COURT: Do you feel that you are competent to handle this case from a physical standpoint, emotional, mental standpoint?

MR. HANCE: Right, sir.

THE COURT: You understand that The Court will see to it that your rights are protected in the case, of course, but one of the rights being that you are entitled to be represented by counsel. At this point you are represented by counsel. You also have the right to

represent yourself, do you understand these?

MR. HANCE: Right, sir.

THE COURT: And you are willing to allow Mr. Smith, then, to consult with you, participate in the trial according to your instructions and your directions?

MR. HANCE: Right, sir.

THE COURT: Would you like to state anything further to me in that connection?

MR. HANCE: Yes, Your Honor. It is going to be hard to believe, Your Honor, but that confession, I am going to have to prove this and I will attempt to, but that confession is not mine. Because it says one thing that I don't do. I can't see anything really questioning to a crime, at least a capital crime of murder and besides that, I am also, well, got charged with two other crimes at Fort Benning and those are the same as this one, confession, and each confession has the same meaning to kill and I don't understand. Of course, my name is on it, but I didn't want to sign it. Like I said before, I am going to have to prove it, and I will attempt to.

MR. WILLIAMS: Your Honor, If I may, on the issue of his, of course, this is a problem we are going to have if he represents himself, but the only issue now is whether or not he wishes to represent himself and waives counsel, and I ask that he be confined to that.

THE COURT: All right, sir. For the purposes

Mr. Hance, let me ask you: Have you had any legal training of this type yourself?

MR. HANCE: Just, I just watched, Your Honor.

THE COURT: You have never participated as an attorney?

MR. HANCE: No, sir.

THE COURT: But do you realize that the trial of the case is subject to any number of rules having to do with the admissability of evidance, the procedural rules as to who gets to proceed when and in what fashion and that the Court must make the determination of how the rules are to be followed?

MR. HANCE: Right, sir.

THE COURT: Do you feel that you are so well versed in these proceedings and rules and the substance of the law that you can give yourself adequate representation in your own case?

MR. HANCE: Also with my attorney here for the rules. So that will keep me from breaking any laws while I am in here.

THE COURT: You realize that when The Court rules upon any objections or motions that for the time being that will be a final ruling and will not go back into it and try to rehash it. Do you understand that?

MR. HANCE: Right, sir.

THE COURT: And where The Court gives you directions to how you will proceed, that is the way it is going to be without any more argument about it.

MR. HANCE: Right, sir.

THE COURT: And that you will be subject to being held in contempt of Court, if you do not abide by these rules?

MR. HANCE: I understand.

THE COURT: And if at any time your conduct becomes such as not to allow the trial to proceed in an orderly and lawful fashion, then you would not be allowed to act as your own counsel?

MR. HANCE: Sir, I understand, but as long as it is legal, then the District Attorney should not object to it, right?

THE COURT: That's correct. He will not be permitted to make any unsubstantiated motions or objections at all. Arguments will be heard upon any objections made by any side and the ruling will be made by The Court. My main concern is to see that you are given a fair trial and that The State be also given a fair trial and that it proceed in an orderly fashion according to law and that there will not be any

disruption because of your lack of experience or any other reason and at any such time that it appears that the trial is in danger of becoming just a discussion of the issues then The Court is going to intervene and see to it that co-counsel instructs you as to how you should proceed.

MR. HANCE: Right.

THE COURT: Now I want that understood at this time. And any time you wish to redesignate Mr. Smith or anybody else as lead counsel in the case, you are free to do so.

MR. HANCE: Right, sir.

THE COURT: For this purpose, then, I will grant his motion under these instructions, but I will ask Mr. Smith to advise with him fully as to his manner of presenting whatever he wishes to present in the case. I do want him to understand that the burden is on the State to prove the guilt in this case as in any criminal case beyond a reasonable doubt. You don't have any burden to prove yourself innocent.

MR. HANCE: I see. I didn't kill that woman.

MR. WILLIAM SMITH: If Your Honor, please, if I may?

THE COURT: We don't need to go into that. I just want you to know where the burden lies in the case.

So you will be afforded the right to face those who accuse you and put them through a thorough and sifting examination and listen to the testimony that they give. You have the right to subpoena witnesses yourself if you wish to and if what they have to say is pertinent, germaine to the issues then they will be heard.

MR. HANCE: Your Honor, I have a question, sir?

THE COURT: With respect to this motion? Go ahead.

MR. HANCE: If that confession is proved not to be mine, will I be acquitted?

THE COURT: The Court is not at liberty to go into that issue at this time. I will ask you to con[illegible] with counsel. You have able counsel, experienced and able and this is an issue that you should take up with him.

MR. HANCE: My apology to the Court.

MR. RICHARD SMITH: Your Honor, may I also state for the record that Mr. Hance is doing this against my advice, but he informs me that he has certain items of information and tactics and he doesn't want to discuss it with anyone else, including myself.

THE COURT: That's entirely for him to decide and I understand the position you are in. I will just ask that you see that he is afforded a fair trial and

of course, it is The Court's intention to see he gets it, but if it takes the assistance of you, we will hear from you at any time.

MR. RICHARD SMITH: Your Honor, the final motion was for a change of venue. This motion was made at the time this originally happened and we found Columbus was in somewhat of an uproar in regards to the stocking stranglings and that situation. That seems to have been subsided as of this moment and Mr. Hance has advised me that he wishes to withdraw the motion for change of venue and not have the motion considered by The Court.

THE COURT: Mr. Hance, is that correct? You do not wish to have the case tried in another jurisdiction?

MR. HANCE: (Witness shakes head.)

THE COURT: All right, I think that concludes the hearing then. That motion then has been withdrawn and the other motions, rulings, have already been made.

MR. RICHARD SMITH: Thank you, sir.

(HEARING CONCLUDED.)

CERTIFICATE OF REPORTER

MUSCOGEE COUNTY)
)
GEORGIA)

I, Shari B. McMillan, Official Court Reporter for the Chattahoochee Judicial Circuit of Georgia, do hereby certify that the hearing of The State of Georgia versus William Henry Nance was heard on November 27, 1978, that I was authorized to and did report on a shorthand machine the proceedings in said hearing, and that the foregoing pages 2 to 13 inclusive, constitute a true and correct transcription of my shorthand report of the testimony and documentary evidence adduced in said cause.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 21st day of July, 1979.

Shari McMillan
Certified Court Reporter B-490
Chattahoochee Judicial
Circuit of Georgia

GEORGIA, MUSCOGEE COUNTY;
CLERK'S OFFICE, SUPERIOR COURT
FILED IN OFFICE
JUL 25 1979
Mike Miller
DEPUTY
CLERK SUPERIOR COURT

GEORGIA, MUSCOGEE COUNTY:

CLERK'S OFFICE SUPERIOR COURT:

I, James L. Stubbs, Clerk of the Superior Court of Muscogee County, Georgia, do hereby certify that the foregoing is the original copy of the reporter's transcript of a pre-trial hearing filed in this office.

Witness my signature and the seal of said court hereto affixed, this ____ day of January, 1980.

.....

Clerk, Superior Court
Muscogee County, Georgia

CHARGE OF THE COURT

It is the duty of the Court to instruct you as to the law which you must apply to the facts of the case, after you determine what the facts are. It is important that you listen closely to these principles of law which I shall instruct you in, so your verdict will be one that is based upon the facts and the law, otherwise it would not be a lawful verdict, and all that we've been doing since Monday would be for naught. So please give me your close attention, and if you need to have any of this repeated to you or recharged, you will have the opportunity to ask the Court to do so, it depends upon whether the Court feels it is necessary. So, I am going to ask you to give your undivided attention to me during this portion of the trial.

The defendant on trial is named William Henry Hance in this Bill of Indictment, in which the State of Georgia has charged him with the commission of two offenses, we'll refer to them by their names; in Count One, Murder; Count Two, Criminal Attempt Theft by Extortion.

The Grand Jurors selected, chosen and sworn for the County of Muscogee, State of Georgia, in the August Term, Nineteen Hundred and Seventy-eight, and on the 15th day of August of that year returned into this Court the following indictment, I will omit the formal parts, but the allegation

reads as follows, that: "These Grand Jurors, in the name and behalf of the citizens of Georgia, do charge and accuse William Henry Hance in Count One with the Offense of Murder." Hance is referred to as the Accused. "For that said Accused, in the County of Muscogee, in the State of Georgia did on the 28th day of February, 1978, unlawfully, with malice aforethought, kill and murder one, Brenda Gail Faison, alias Gail Jackson, alias Gail Bogen, by then and there hitting and beating her with a blunt instrument, a further name and description being unknown to the Grand Jurors, contrary to the laws of said State, the good order, peace and dignity thereof."

And In Count Two, "And the Grand Jurors aforesaid, on their oath aforesaid, in the name and behalf of the citizens of Georgia, charge and accuse William Henry Hance with the Offense of Criminal Attempt Theft by Extortion, for that said Accused, in the County of Muscogee, in the State of Georgia, did on the 8th day of March, Nineteen Hundred and Seventy-eight, unlawfully attempt to obtain ten thousand dollars from Curtis E. McClung, Chief of Police, Columbus, Georgia, by threatening to kill, execute and murder Gail Jackson, said act of Accused in writing and depositing in the United States Mail a letter addressed to the Columbus Police Department, in care of Chief of Police, Columbus, Georgia, threatening to execute Gail Jackson unless ten thousand dollars was paid by June 1, 1978, being a substantial

step toward the commission of a felony, to wit: Theft by Extortion, contrary to the laws of said State, the good order, peace and dignity thereof."

These are the allegations, ladies and gentlemen, of the Bill of Indictment. These allegations constitute no proof of any matter, nor does the indictment itself constitute proof of any matter, except that it was returned into this Court by said Grand Jury on that date I previously read to you.

I caution you, ladies and gentlemen of the jury, than an indictment does not constitute evidence nor does the fact that the Grand Jury has returned the indictment against the defendant constitute any evidence or inference of guilt, it is merely the manner in which the charge is brought before the Court for trial on its merits as revealed in your presence and hearing.

To this indictment the defendant has appeared and entered his plea of not guilty. The defendant's plea of not guilty is no evidence of his innocence. The allegations of the Bill of Indictment, together with the defendant's plea of not guilty thereof constitute, formulate and establish the issues upon which you're called to try, and by your verdict to determine namely whether the defendant is guilty or innocent of the crimes of murder and criminal attempt theft by extortion as charged in that indictment.

It now becomes the duty of the Court to instruct you as to the principles of law applicable to this case. You will take these principles as given in charge by the Court and apply them to the facts of the case as you ascertain the facts of the case to be from the proceedings had before you, and in that way make up your verdict in the case.

The word verdict relates to truth and has reference to the truth of the case as ascertained by you in your verdict. Under our system it is the duty and responsibility of the Judge to ascertain what the law is and what is applicable to the case, and to instruct you of what the law consists.

It is your duty to ascertain the truth of the case from a factual standpoint from the evidence presented to you. Then it is your duty and responsibility to apply the law to the facts and by this application of law to the facts, and of facts to law to arrive at a verdict in the case.

The defendant, as I say, has entered his plea of not guilty to the indictment, whereby he denies the charges made therein and thus the burden of proof is placed upon the State to prove each essential element of the charge made in the indictment, or the charges made in the indictment, beyond a reasonable doubt.

A reasonable doubt, ladies and gentlemen, is one based upon some ground in the testimony, or the want of testimony, or upon the evidence in any other manner, including

the testimony given by the defendant himself. It is a doubt which is reasonably and fairly entertained as opposed to a vague and fanciful doubt. A reasonable doubt is such a doubt as would remain in the minds of fair minded jurors who are honestly seeking for the truth, after having listened to all of the testimony and considered all of the evidence in the case.

The defendant enters upon the trial of the case with a presumption of innocence in his favor, and this presumption remains with him throughout the trial until and unless the State produces in your presence and hearing evidence of sufficient weight and character to convince your minds beyond a reasonable doubt of the guilt of the Accused. So long as this doubt remains in your mind it is your duty to give the defendant the benefit of that doubt and to acquit him. But, if the doubt no longer exists then you are authorized to convict him.

I charge you, ladies and gentlemen, you are made by law the sole and exclusive judges as to the credibility of witnesses and the weight you shall give their testimony. That applies to all of the witnesses in the case. And in determining their credibility, you may consider all the facts and circumstances of the case. You may consider the witnesses' manner of testifying, their intelligence, their means and opportunity for knowing the facts to which they testify. You may consider the nature of the facts to which they testify,

the probability or improbability of their testimony. You may consider their personal credibility so far as that may legitimately appear to you from the trial of the case.

I further charge you, ladies and gentlemen, that the law directs that it is your duty where it can be done to so reconcile conflicting evidence, if there be such in the case, as to make all the witnesses speak the truth, so that perjury will be imputed to none of them. But, if there be evidence in the case of such irreconcilable conflict that this cannot be done, you will accept that evidence which is most reasonable and credible to you. As I stated a moment ago, you are made by law the exclusive judge of the credibility of witnesses and the weight you shall give their testimony.

You have heard the term used in the trial to impeach a witness, or the impeachment of testimony. To impeach a witness is to establish that he is unworthy of belief. When the believability of a witness is attacked, the jurors then must decide the truthfulness of the witness' testimony. When witnesses appear and testify they are presumed to speak the truth and are to be believed by the jury unless it is established that they are unworthy of belief in some manner provided by law or otherwise contradicted in your judgment. That a witness is unworthy of belief and his testimony thus discredited may be established by several methods, one of which is by disproving the facts testified to by him or her. Another is by proof of

contradictory statements previously made by him or her on matters relevant to his or her testimony in the case.

You are to weigh all the testimony and evidence supporting or discrediting a witness, and at last say whether you will believe or disbelieve the testimony of the witness attacked. It is the exclusive function of the jury under all circumstances of the case to determine whether a witness' testimony is or is not believable. However, if you determine in your minds absolutely that a witness' testimony is impeached and thus discredited, then it is your duty to disregard such testimony, unless such testimony is corroborated, in which case you may believe the witness. It is always a matter for you to determine whether or not a witness has in fact been discredited.

Now, what is evidence? Evidence is all the testimony received from the witnesses, the exhibits which are admitted during the trial, any facts which may be agreed to by counsel. It does not include the indictment, as I've already told you, or the opening statements, or the closing arguments, of course, nor the charge of the Court is not evidence.

Now, evidence may be either direct or circumstantial. Direct evidence is the testimony given by a witness who has seen or heard the facts to which he testified, and it includes exhibits which are admitted into evidence during the trial, it's that evidence which points directly and immediately to the question at issue.

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. Circumstantial evidence is the proof of fact or circumstances by direct evidence from which you may infer other related or connected facts which are reasonable and justified in the light of your experience. Circumstantial evidence alone will not justify a finding of guilty unless the circumstances are entirely consistent with the defendant's guilt, wholly inconsistent with any reasonable theory of the defendant's innocence and are so convincing as to exclude a reasonable doubt of the defendant's guilt. If one or more of the circumstances relied upon by the State are not so clearly proven, and for that reason you reject one or more of the circumstances so relied upon, then you would inquire whether the remaining circumstances you believe are so clearly proven or consistent with the defendant's guilt, and inconsistent with any other reasonable hypothesis save that of his guilt.

Now, during the course of the trial the Court has on occasion ruled out certain testimony as inadmissible. It has stricken certain testimony from the record on the ground that it was not admissible as competent evidence, and I charge you in that regard that any such testimony which I have ruled out or stricken from the record, is not evidence in the case, and you cannot consider it during your deliberations in reaching your verdict. You must not speculate as to why the Court

sustained the objection to any questions or what the answers to such questions might have been. You must not draw any inference or speculate on the truth of any suggestion included in such a question which was not answered.

Now, ladies and gentlemen, this defendant is on trial for the particular offenses as charged in this Bill of Indictment that you will have out for your consideration, and on no other charge or charges. The defendant, William Henry Hance, is not on trial on account of any other alleged offense or offenses, and any evidence in this case with reference to any other alleged offense or offenses, if any, is admitted for the purpose of your consideration solely and only under the provisions of the law that where knowledge, motive, intent, good or bad faith, or identity, or any other matter dependent upon a person's state of mind are involved as material elements in the offense or offenses for which he is on trial. The evidence of the defendant's conduct with reference to the same or similar transactions about the same time is admissible for consideration of the jury insofar only as it might tend to illustrate the defendant's state of mind on the subject involved, if you think it does so illustrate it.

The Court does not intimate or express to you any opinion whatsoever as to whether the defendant has had any other transactions at any time similar to the charge for which he is being tried in this Bill of Indictment, or of his guilt

or innocence of the charge contained in this indictment. Whether he has or has not committed other or similar offenses as I've explained to you, is a matter for you to determine. But, if you believe that the defendant has had similar transactions, you will bear in mind in connection with such evidence that you are considering it solely with reference to the mental state or intent of the defendant insofar as the same is applicable, or refers to, or illustrates the charges embraced in this Bill of Indictment which you will have out with you for your consideration and for no other purposes.

Now, an alleged confession or confessions by the defendant were testifed to during the course of this trial. Before you may consider these as evidence for any purpose you must first decide two questions; first, was the defendant warned of his constitutional rights, and did he clearly understand and knowingly give up such rights; and second, was his confession clearly and voluntarily, clearly voluntary and freely and willingly given. I'll repeat that second portion. Was his statement or confession clearly voluntary, and freely and willingly given.

The rights which must be explained and which must be understood and given up by the defendant before any confession is taken by police are as follows: (1) That he had a right to remain silent; (2) That if he chose not to remain silent anything that he said, which would include anything

he wrote or signed, could be used as evidence against him in court; (3) that he had a right to consult a lawyer before any questioning, and to have that lawyer present with him at all times during any questioning; (4) that if he did not have money for a lawyer, a lawyer would be provided for him by the State to represent him before any questioning and to be present with him during any questioning. Further, that he would have the right to stop any interrogation and to be provided counsel even though he previously had waived his right, should he desire to request counsel after interrogation had already begun.

Now, with respect to voluntariness. To be voluntary a confession must be freely and willingly given with complete understanding, and without any threats or use of violence, or fear, or injury, or any suggestions, or promises of leniency or reward. A statement induced by the slightest hope of benefit, or the remotest fear of injury is not voluntary. To be voluntary a statement or a confession must be the product of a free will and not under compulsion or any necessity imposed by others.

The burden of proof is on the State to establish that the warning of all the rights mentioned were given, that they were clearly understood, and knowingly given up by the defendant, and that the statement or confession was voluntary and was freely and willingly made.

If you find that all the warnings as to his constitutional rights were given, that the defendant did clearly understand the meaning of what was said and knowingly gave up such rights, and if you further find that any confession was voluntary, then you would consider it as evidence, and you will apply the general rules for testing the believability of witnesses, and decide what weight, if any, you give to all or any part of such evidence. However, if you fail to find any one of the conditions that I have just described, you must disregard the confession entirely and give it no consideration in reaching your verdict.

I charge you that you should consider with great caution the evidence of any admission or incriminatory statement made by the defendant. In weighing such evidence you should consider whether the confession was made by the defendant, whether it was truthful, whether it was accurately repeated, or reported, whether the defendant understood what was said. Consider the circumstances under which it was made, the emotions of hope or fear that may have existed. You may believe this type of statement in whole or in part, believing that which you find to be true and rejecting that which you find to be untrue. Upon you alone rests the duty to apply the general rules for testing the believability of witnesses, and decide what weight should be given to all or any part of the statement.

Certain witnesses have been introduced for your consideration in the trial of this case who are in law termed expert witnesses. In that connection I charge you that the law permits witnesses who have had special training, knowledge and experience in certain lines to give their opinions as experts based upon their knowledge of particular matters. The weight which is to be given the opinion of experts is a matter for you to decide. You may accept it and act on it, or you may reject it, and then act on your own judgment as you may apply it to the evidence in the case. The testimony of an expert, like that of any other witnesses, should be received by you and given such weight and credit as you think it is properly entitled to.

Ladies and gentlemen, I further charge you that regardless of whether or not the defendant has any other defense, and regardless of whether or not there is any other evidence in the record upon which a reasonable doubt as to his guilt could be based, proof of good character may of itself constitute such a defense in his behalf, and you, the jurors in this case overriding any amount of positive evidence pointing to the guilt of the defendant, may if you see fit, acquit the defendant upon the reasonable doubt and proof of good character generated in your minds, and in that event the form of your verdict would be, "We, the jury, find the defendant not guilty."

Identity is a question of fact for the determination

of the jury. It is dependent upon the credibility of the witness or the witnesses offered for this purpose, whether dependent upon physical attributes such as voice, dress, height or weight, or some intangible factor not capable of description. You have the right to take into consideration all of the factors previously charged you in regard to the credibility of witnesses. It's for you to say whether under the evidence in this case the testimony of witnesses and the facts and circumstances sufficiently identify this defendant as the perpetrator of this crime or these crimes beyond a reasonable doubt. It's not necessary that the defendant prove that another person committed the offense, it is sufficient if there are facts and circumstances in this case which would raise a reasonable doubt as to whether this defendant is in fact the person who committed the crime. Identification by a witness of a person or a thing is necessarily a matter of opinion, and when accompanied with the facts upon which it is founded it is always admissible.

If you should find that fingerprints corresponding to those of the defendant were found in a place indicating where a crime was alleged to have been committed, this would be circumstantial evidence, it's weight and value being a question for you, the jury, to determine. To warrant a conviction on the fingerprint testimony alone, the circumstances must be such that the fingerprints could only be impressed

at the time when the crime was committed. I'm referring now to Count Two of the Indictment.

Now, there are certain general definitions in the Georgia law which I must give to you and I want you to consider. A crime is defined in Georgia as a violation of a Statute of this State in which there shall be a union or a joint operation of act and intention or criminal negligence.

I'm going to give you certain presumptions of law which are applicable in this case. A presumption is a conclusion that the law draws from given facts. Now, each of these presumptions is rebuttable, that is, they are subject to being overcome by evidence to the contrary. Now, these are as follows: Every person is presumed to be of sound mind and discretion. This presumption may be rebutted. The acts of a person of sound mind and discretion are presumed to be the product of that person's will. A person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts. But these presumptions may be rebutted. A person will not be presumed to act with criminal intention, but the trier of facts, and that's you, the jury, may find such intention upon consideration of the words, the conduct, the demeanor, motive and all other circumstances connected with the act for which the accused is prosecuted.

A specific intent to commit the crimes charged in this indictment, each count thereof, is an essential element

that the State must prove beyond a reasonable doubt. Intent is always a question for the jury and it's ordinarily ascertained by conduct. Intent may be shown in many ways provided you find that it existed from the evidence produced before you. It may be inferred from the proven circumstances or by acts and conduct, or it may be presumed when it is the natural and necessary consequence of the act.

Now, as to the specific offenses charged in this Bill of Indictment, I charge you that in the Code of Georgia, Criminal Code is Title 26, Chapter 11, has to do with criminal homicide, and more particularly 26, Section 26-1101 entitled Murder, reads as follows: "(a) A person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart. A person convicted of murder shall be punished by death or by imprisonment for life."

But, you are not concerned with any question of punishment at this point, the sole issue before you in this portion of this trial is to determine the guilt or the innocence of the defendant as to these two charges. Before

you would be authorized to find the defendant guilty of the offense of murder you must find and believe beyond a reasonable doubt that the defendant did, with malice aforethought, either express or implied, cause the death of the person named in the indictment.

I charge you that if you find and believe that at any time prior to the date this indictment was returned into this Court that the defendant did, in the County of Muscogee, State of Georgia, with malice aforethought, kill and murder the person named in the indictment, Brenda Gail Faison, and the two aliases, in the way and manner set forth in this indictment, then you would be authorized to find the defendant guilty of murder.

The other offense which is charged in this indictment is known as criminal attempt theft by extortion. First I will define for you what theft by extortion is under the Georgia law. In the same Title, but in Chapter 18, we find Section 1804, it reads in part as follows: "A person commits theft by extortion when he unlawfully obtains property of, or from another person, by threatening to inflict bodily injury upon anyone or commit any other criminal offense. In a prosecution under this Section, the crime shall be considered as having been commited in the County in which the threat was made or received, or in the County in which the property was lawfully obtained, if it related to any property."

And we need not go into the punishment of that particular offense.

Now, I want you to understand that the defendant is not charged with the offense of theft by extortion, but charged with the crime of criminal attempt to extort by theft. And in that regard I charge you that a person commits criminal attempt when with intent to commit a specific crime he performs any act which constitutes a substantial step toward the commission of that crime. So you understand that this defendant is being charged with the intent to commit this theft by extortion under the provisions of the criminal attempt section of the Code. If you believe that any time within four years next preceding the date that this Bill of Indictment was filed that he did commit that offense which is in Count Two of the Indictment, you would be authorized to find the defendant guilty of that crime if you believe that beyond a reasonable doubt.

All right, in conclusion I charge you that the burden in the case rests upon the State to prove beyond a reasonable doubt that the defendant is guilty of these offenses with which he is charged, and I've given you the definition of reasonable doubt and I think a complete charge as to the other aspects. I do want to state to you that anything that the Court has done or said in the trial of the case was not intended to intimate, or to hint, or to suggest to you

what your verdict ought to be in this matter because this is entirely for you jurors to determine upon your consideration of the case.

The twelve of you who have been sworn must reach a unanimous verdict with respect to any issue which is an element of either or both of these offenses. It must be a unanimous verdict and agreed upon by the twelve jurors. I'll give you further instructions as to the alternate jurors momentarily.

The only interest that the Court has in the matter is to see that the case be fairly presented according to law, and that you as honest and conscientious and impartial jurors consider the case as the Court has instructed, and return verdicts that speak the truth as you find the truth of the case to be. By no ruling which the Court has made during the progress of the trial has the Court expressed any opinion upon the facts in the case or upon the credibility of the witnesses or upon the weight of the evidence, or upon the guilt or innocence of this defendant. By no portion of this charge have I intimated or expressed any opinion on any of these matters because these belong exclusively to you for your judgment and determination. The Court states the law, you find the facts, you apply the one to the other, as I've already told you, and that way decide the case.

The charge of the Court should be received and

considered by you in its entirety, as a whole, as one body of law applicable to this case. Such repetition as does occur or did occur during the progress of this charge did not take place for the purpose of emphasizing the principle or principles of law repeated over other principles, but such repetition as did occur took place simply in order to enable the Court to expound the law to you better as the charge progressed in your presence. You are the sole judges of the facts of the case. You are the sole judges of the credibility of the witnesses. You are the sole judges of the weight of the evidence, and of the guilt or innocence of the prisoner at the bar.

The State contends the defendant is guilty of each of these charges contained in the indictment. The defendant denies he is guilty. This is the issue upon which you are to pass. Look to all the facts and circumstances of the case, to all of the evidence introduced, the testimony of the witnesses, the physical evidence, the demonstrative evidence, the documentary evidence, all evidence which will be out with you, and you determine where the truth lies. If you believe beyond a reasonable doubt that the defendant is guilty of the charge of murder, then you would be authorized to find the defendant guilty, and the form of your verdict would be, "We, the jury, find the defendant guilty," and you will designate the offense of murder.

If you do not believe beyond a reasonable doubt that the defendant is guilty of the charge of murder, then it would be your duty to acquit him, and in that event the form of your verdict would be, "We, the jury, find the defendant not guilty of the offense of murder."

Likewise, with respect to the charge of criminal attempt theft by extortion, if you believe beyond a reasonable doubt that the defendant is guilty of that charge, you would be authorized to find him guilty, and the form of your verdict would be, "We, the jury, find the defendant guilty of the offense of criminal attempt theft by extortion."

Conversely, if you do not believe beyond a reasonable doubt that the defendant is guilty of that charge, it would be your duty to acquit him, and the form of your verdict would be, "We, the jury, find the defendant not guilty of the offense of criminal attempt theft by extortion."

Upon retiring to the jury room, you should first select one of your number to act as foreman or forelady, or foreperson if you prefer, and that person will preside over your deliberation and will sign the verdict in which all twelve of you will freely and voluntarily agree.

Your initial conduct upon entering the jury room is a matter of importance. You've been together all week, and I'm sure you've gotten to know each other pretty well, but I caution you it's not wise immediately to express a

determination to insist upon a certain verdict. If your sense of pride is aroused you may hesitate to change your position even if you decide you're wrong. So, consult with one another and consider each other's views. Each of you must decide this case for yourself, but you should do so only after a discussion and consideration of the case with your fellow jurors. Do not hesitate to change an opinion if convinced that it's wrong. However, you should never surrender honest convictions or opinions in order to be congenial and in order to reach a verdict solely upon the opinions of other jurors.

When you have made your verdicts in these cases, you will notice on the back of the indictment there is a place for a verdict to be written. I'm going to alter it to some extent like the first form of verdict, if you choose to use this, it's there for your convenience, it shows, "We, the jury, find the defendant blank," and you'll fill in the words guilty or not guilty, and I'll ask you to fill in the name of the charge. And there's a place also for blanks to be filled in showing the date, and a place for the foreman to sign, I'm going to alter the second part which is, "We, the jury, fix the sentence as follows," this is an old form, and I want to make that much like the first form I just read to you, but I'm going to wait and do that after I excuse you to begin your deliberations, and take it up with counsel so we can make sure that there's no objection to the form which

goes out with you all. But, in any event, when you have reached your verdict, have your foreman write it in in each event in the form in which I have instructed you, and it will be dated also today's date, if it is today's date, will be the 15th day of December, 1978, and there will be a line provided for the foreman to sign the verdict.

When you have completed filling in those unanimous verdicts, then knock on your door to signal to the bailiff that you have in fact reached your verdicts in the case, he'll summon us all back in here and we will await the reception of your verdict.

Now, with respect to you two alternate jurors, I believe it's Ms. Pate and Mr. Ness. You are instructed that you must be sequestered under the care of a bailiff also as will be the jurors who are passing on the case. So, don't discuss the case with anyone or between yourselves, or the bailiff who is assigned to your care. Should any juror now considering the case become ill or otherwise unable to continue you would then be responsible for joining the case instead of the juror who had become disqualified. In the meantime you must be sequestered pending the return of a verdict by the jury, or otherwise directed by the Court.

So, I'm going to ask that you all take charge of these two alternate jurors and take them to some separate place, they don't necessarily need to be kept in the other

jury room, but someplace where they will not be around anyone else, and we'll discuss where to do that as soon as I dismiss the first twelve. So, you'll make no communication with them yourself or permit anyone to communicate with them, you understand as you were sworn to do previously.

Let me ask the first twelve jurors now then to retire to the jury room where you've been going. Select your foreman, and when we deliver all of this evidence to you and a copy of the indictment, then you may begin your deliberations. If you have any questions send me word through the bailiff.

(The jury retires to begin deliberations at 6:23 o'clock p.m.)

THE COURT: Lt. Freeman, we have two alternate jurors who need to be sequestered also with a bailiff, is there any place better than another for me to direct them?

LT. FREEMAN: We can take them down to our office.

THE COURT: All right, I don't want any deputies discussing with them or anything else.

MR. W. SMITH: Your Honor, I'm sorry, I was listening to one of the bailiffs, he was giving me some information about one of my employees. What did you say?

THE COURT: We're sequestering the two alternates as I just instructed they would be, and I was just asking the lieutenant here if there was a place that might be

a little bit better than one of the other jury rooms to take them where he can keep them separate and apart, and he suggested that he take them to the sheriff's office.

Well, as long as you're sure there will be no conversation that will reach their ears.

Would you all please follow Lt. Freeman down to his office, you've heard the instructions I've given you.

(The two alternate jurors leave the courtroom at this time.)

MR. R. SMITH: Your Honor, it's my understanding that the Court was going to charge on the subject of venue, is that a misunderstanding on my part?

THE COURT: I believe it was included in the portion of the charge I gave which had to do with County, one, if we may call it that, where I said, "I charge you that if you find and believe any time prior to the date this indictment was returned into this Court that the defendant did in the County of Muscogee, State of Georgia, with malice aforethought kill and murder," et cetera.

I did not mean to mislead you if I said I was going to give a special charge on venue, but, of course, I charged them that every essential element must be proved.

MR. R. SMITH: Yes, sir, I understood there would be a separate charge on venue itself.

THE COURT: Do you have any exceptions you would like to list to the charge on behalf of the defense?

MR. R. SMITH: Your Honor, the only exception I would have would be on the charge of venue which I did understand would be a separate charge, and for that reason did not file a specific charge or request for charge on that part.

THE COURT: Does the State think the jury ought to be reassembled for a more specific charge as to venue? It's my feeling that this should cover it.

MR. W. SMITH: I concur, Your Honor.

MR. W. SMITH: Your Honor, our feeling was since we specifically raised the question in those terms that it being of venue, that mention of the word venue was more significant and a point than just saying it must happen in the County of Muscogee.

THE COURT: Well, that's just what venue means.

MR. W. SMITH: I don't believe the jury would know what venue means necessarily.

THE COURT: I think they would have a better understanding if I told them it must be proved that it took place in Muscogee County, Georgia than I would if I tried to explain to them what venue means.

I'm going to note your objection, and it is on the record. I'm going to let the charge stand in that respect

DIRECT EXAMINATION

BY MR. RICHARD SMITH:

Q Mr. Hance, where are you from?

A Lexington, Virginia.

Q And can you tell us about your family?

A I came from a relatively poor family, kind of strictly poverty, but they're a beautiful family.

Q Do you have brothers and sisters?

A One sister.

Q One sister, and where is she?

A Newport News, Virginia.

Q When is the last time you saw her?

A Two years ago.

Q Have you heard from her recently?

A About three weeks ago.

Q What about your father?

A About the same time.

Q Where is he?

A Lexington.

Q Lexington; has he been to see you?

A No, he's been feeling rather poorly lately.

Q How about your mother?

A No, she died about six years ago.

Q Six years, and what age were you then when she died?

A Close to twenty-one.

Q Where were you at that time?

A California.

Q What were you doing in California?

A Stationed in the Marine Corps then.

Q Were you with her when she died?

A No, she was at home.

Q How long had it been since you saw her before she died?

A About two years or so.

Q Why such a long time?

A Well, at that time, well, they couldn't really let people go home on leave, and I didn't really think that she was just that sick.

Q You say you were in the Marine Corps?

A Yeah.

Q But you're in the Army now?

A Yeah.

Q How did that come about?

A Well, I was married at the time I was in the Marine Corps, and my marriage was breaking up, so I got out of the Marine Corps and came in the Army because most of the time I was in the Marine Corps I was out in the field. But, my marriage broke up anyway.

Q Do you have a child by that marriage?

A Yeah.

Q Where is that child?

A With her mother.

Q Is it one child?

A Yeah.

Q Boy or girl?

A Girl.

Q A little girl; when is the last time you saw her?

A About two years ago.

Q Two years ago; what is her age?

A Three.

Q Three years; you saw her when she was about a year old?

A Pardon me?

Q You saw her when she was about a year old?

A Right.

Q Why haven't you seen her since?

A Well, I was planning on seeing her this Christmas.

Q Where is she?

A Williamsburg, Virginia.

Q Williamsburg, Virginia; do you have any other children?

A I've got one here in Columbus.

Q And where is that child?

A With his mother.

Q When is the last time you saw that child?

A About two months after it was born.

Q Okay, and how old is that child now?

A It should be about nine or ten months old.

Q The child was just born right before you went into jail, is that right?

A Right.

Q Who is the mother of that child?

A Linda, Linda Davis.

Q Linda Davis that was in here yesterday?

A Right.

Q How do you feel about these children?

A I love them.

Q You mentioned something about being shipped overseas or something?

A Yeah, I was going overseas around July the first.

Q Around July the first; and this thing intervened and changed that?

A Right.

Q You told us just yesterday that you didn't kill these girls.

A I didn't.

MR. W. SMITH: Your Honor, I'm going to object to that. That issue has been decided, it's over and behind us, it cannot be in mitigation for punishment at this time.

MR. R. SMITH: Your Honor, I think his thoughts around

the subject are relevant.

MR. W. SMITH: He asked him to again state whether or not he had killed the girls. That cannot be relevant at this point.

THE COURT: I did not understand him to state whether or not, I understood him to begin-- I thought it was going to be a question, prefacing it with what he had said previously. I agree that the tenor of his examination should not permit any presentation of an issue of facts.

MR. R. SMITH: Your Honor, my position, of course, at this hearing is that the question of whether or not he killed the girls has been decided by the jury, and I'm not asking that question for purposes of trying to raise the question in the jurors' minds at this point. But, I think it's significant to get into his thoughts and thought processes on the question in terms of mitigation for the jury to understand what goes into his mind and what kind of person he is.

THE COURT: I'll have to hear what you're going to do before I can rule further.

MR. R. SMITH: My next question is, why he thinks that, why he says that.

MR. W. SMITH: Why he thinks, Your Honor, I disagree and I object to this line of questioning, this issue is over with. It's beyond, behind us, it's been

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disposed of, the jury made a finding on it beyond a reasonable doubt. And why he thinks he didn't kill them cannot be relevant evidence under the definition of mitigating circumstances that the Court has and the Court has given the jury, I submit.

MR. R. SMITH: Your Honor, we would disagree with that only if the Court is going to instruct the jury that they may not consider in aggravation the fact that he denied doing something they decided he did. And we think that the jury has a right to consider his emotions for denying this crime in mitigation.

THE COURT: I'll permit you to continue, but I want your questions directed to him toward establishing mitigation and not legal justification.

MR. R. SMITH: Yes, sir; well, what I'm trying to determine is why he came before the Court and denied this charge, not in terms of legal justification but in terms of sincere feelings.

THE COURT: Go ahead.

Q Do you in your own mind believe that you killed those girls?

A No.

Q Do you recall having killed those girls?

A No.

Q Were you speaking to us sincerely yesterday?

A That's correct.

Q Do you believe the testimony you gave yesterday was true?

A Yes.

MR. W. SMITH: Your Honor, if I may, this is absolutely nothing but a denial of his commission of the crime, again which has been disposed of, before the jury. He's saying that he swore to the truth when he said that he did not kill them. That is exactly what I objected to.

MR. R. SMITH: Your Honor, the question I asked him was whether or not he believed what he said was true and I think that is significant to the question in this particular instance of why he's come before the Court, and I am not presenting any evidence to the jury that he did not do it. I'm only trying to present evidence to the jury that if he comes before the jury saying he didn't do it, then he believed it, that he wasn't doing that, that he's trying to tell the jury something that he believed not to be true.

MR. W. SMITH: Your Honor, this is trying to imply some kind of mental issue in the trial which has not been raised by any competent evidence whatsoever during the course of the trial, not been in issue at this trial.

MR. R. SMITH: Your Honor, the defendant's state of

mind at the time of the trial and the time of the commission of the crime, all these things are to be considered in this stage of the trial.

THE COURT: I believe the District Attorney's point is well taken. I'll overrule, I'll sustain his objection and direct you not to follow along the line of questioning that you have just outlined.

MR. R. SMITH: All right.

Q Mr. Hance, do you have any feelings of remorse about the death of these girls?

A What do you mean by remorse?

Q Do you have any feelings about the death?

A Yeah.

Q Aside from talking about your involvement or lack of involvement, what feelings do you have?

A They were human just like everybody else.

Q Do you have feelings about human life?

A Yeah.

Q What feelings are they?

A Well, I believe everyone has a right to live.

Q Do you think you have the same right?

A Of course.

Q Why?

A I love everybody, I don't put in my head to do anything wrong, and if things do go wrong it's-- if things do go wrong with me or anything of that nature, it could be

corrected.

Q Do you have anything about this that you want to say?

A Well, everything I was saying yesterday was true, and like I said before, I know an officer's word goes good in a Court of Law, but I knew myself that I was telling the truth that I didn't really--

MR. W. SMITH: Objection, Your Honor.

Q Do you have anything you want to say about your position at this stage?

A Well, this really could wreck my life and my career, and that's what I really try to protect, so I try my very best to stay out of trouble.

MR. W. SMITH: Your Honor, I could not hear him, I'm sorry, maybe the court reporter could read back to me. I would like to know what he said, or maybe he can repeat it, but I could not hear that answer. I don't know if the jury could or not.

MR. R. SMITH: I can hear him.

THE COURT: Will you repeat your answer, I was unable to hear it, too.

MR. HANCE: I said, this could wreck my life and career, and that's why I try my best to stay out of trouble.

MR. W. SMITH: Thank you.

Q Anything else that you want to say?

A The jury made a decision, that was up to them, but I was trying my best to get my point across to them.

Q Anything else you want to say?

MR. R. SMITH: He's with you.

MR. W. SMITH: I don't have any questions.

MR. R. SMITH: Mr. Hance, you may sit down.

THE COURT: Sit down, please.

MR. R. SMITH: Your Honor, Mr. Hance has advised me that he wishes to offer no other evidence in mitigation except his own testimony.

THE COURT: Very well, then, we'll hear argument in the case, the State makes the first argument.

MR. W. SMITH: Yes, sir, will they-- I'd like to know before I argue, Your Honor, which counsel will argue for the defense.

THE COURT: Have you discussed with each other who is going to make the closing?

MR. R. SMITH: Yes, Your Honor, Mr. Hance has requested that I make the final argument.

THE COURT: All right, sir.

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY

GEORGIA

* * * * * * *

STATE OF GEORGIA,	)	
	)	
Plaintiff,	)	
	)	
Versus	)	INDICTMENT NO. 40353
	)	
WILLIAM HENRY HANCE,	)	
	)	
Defendant.	)	

HEARING BEFORE:

THE HONORABLE KENNETH B. FOLLOWILL
SUPERIOR COURT
COLUMBUS CONSOLIDATED GOVERNMENT CENTER
COLUMBUS, GEORGIA

October 25, 1979

* * * * * * *

APPEARANCES

HONORABLE WILLIAM J. SMITH, District Attorney, Chattahoochee Judicial Circuit, Superior Court, Columbus Consolidated Government Center, Columbus, Georgia 31901, appearing on behalf of the State of Georgia; and

HONORABLE RICHARD O. SMITH, Public Defender, Columbus Consolidated Government Center, Columbus, Georgia 31901, and HONORABLE ALEX BYARS, of the firm of Jones and Byars, P. O. Box 164, Columbus, Georgia 31902, and MR. WILLIAM HENRY HANCE, appearing on behalf of the defendant.

REPORTED BY:

PAULA E. NIXON
Official Court Reporter
SUPERIOR COURT
P.O. Box 1366
Columbus, GA 31902

WHEREUPON:

(At 11:30 o'clock a.m. on the 25th day of October, 1979, Court was convened.)

THE COURT: The Court calls the case of the State of Georgia versus William Henry Hance, Indictment No. 40353, in the Superior Court of Muscogee County, Georgia, motion for new trial by and on behalf of the defendant. Mr. Smith, are you ready for the State of Georgia?

MR. WILLIAM SMITH: I am, Your Honor.

THE COURT: And Mr. Richard O. Smith appearing for the defendant, are you ready?

MR. RICHARD SMITH: Yes, sir, I'm ready.

THE COURT: At the trial itself, you, Mr. Smith, I believe, were principal counsel, Mr. Hance, the defendant, had asked for permission to serve as co-counsel and it was granted, and he did in fact participate in the case and was afforded the rights of counsel.

Mr. Hance, do you wish to act also as co-counsel in this hearing this morning, which is your motion for a new trial?

MR. HANCE: Yes, sir.

THE COURT: All right, then, also present this morning is Honorable Alex Byars, who has been appointed by the Court at the request of Mr. Richard O. Smith to assist in the preparation of this motion for new trial. And, Mr.

Hance, do you accept Mr. Byars also to help you in this case?

MR. HANCE: Yes, sir.

THE COURT: All right. Mr. Smith, you are the attorney for the movant, I'll hear from you first.

MR. RICHARD SMITH: Your Honor, we have filed this motion for a new trial basically on general grounds. Today we'd like to address the Court on two specific areas, actually the amendment to our motion, and those two areas would be, one, having to do with the confession and the admission of the alleged confession itself, we're going to ask the Court to reconsider its position on that. And the other, which Mr. Byars will discuss with the Court, has to do with the question of venue, in which we're going to ask the Court to look into that again and grant a new trial based on the fact the venue was not properly shown.

Then after that, Mr. Hance may have a remark he wants to make to the Court. I'm not aware of his intentions.

THE COURT: All right, sir. Anything that you wish to say at the outset, Mr. Smith?

MR. WILLIAM SMITH: No.

THE COURT: Very well, the motion for new trial, of course, is part of the record and it appears to be on the general grounds. Are you going to approach the question of the admission of alleged confession first?

MR. RICHARD SMITH: Yes, sir, I'll do that first. Your Honor, in considering the question of the confession in this case, it was somewhat unusual in that the confession was first obtained by the CID statements, Agent Fox and other agents with the CID, before the Columbus Police Department came into the matter. And, we alleged at the time of the trial that these confessions were improperly gained, and the Court overruled us at that time and admitted the confessions, and we're bringing before the Court now for further consideration this question, primarily based on the case of Williams versus the State in which nine factors were set forth to be considered in the question of whether or not a confession was voluntarily and freely given and to be admitted.

Our points have to do with, first the question of whether the accused is held incommunicado, or allowed counsel with relatives, friends or an attorney. The evidence we think in the case shows that Attorney David Clark, from his testimony and the testimony of the CID agents, attempted to communicate with Mr. Hance when he was in custody of the CID, that he sought and searched for him and was unable to locate him, though he called places where Mr. Hance was in fact being kept, and talked to people who should have been able to tell him that Mr. Hance was present. That Mr. Clark had been contacted by members of Mr. Hance's family based on his

previous representation of Mr. Hance in other legal matters not criminal in nature. And that because of Mr. Clark's searching for Mr. Hance and not being told where he was, Mr. Hance was in effect held incommunicado, unable to communicate with his lawyer. And the fact that Mr. Hance may have or may not have, he denies he did and they say he did, ask for an attorney, or said he didn't want an attorney, that is negated by the fact an attorney was looking for him, trying to find him to advise him, his attorney that represented him through other matters and was continuously his attorney. And his attorney would have found him and advised him to remain silent until he could talk the case over with him.

And we feel that this is holding him incommunicado within the meaning of the case, Williams versus the State, which is based on West versus United States, found at 399 Federal Second, 467 and 469, which is a 5th Circuit case in 1968. For that reason, we'd ask the Court again to consider granting a new trial in that the Court improperly admitted the confession.

We also bring up the point of the length of the confession, of the time it took to get the confession, which is one of the nine factors to be considered. The testimony at page 724 of the transcript from Mr. Fox says that Mr. Hance was questioned a total of 18 hours before he signed any

confession. And we submit to the Court that considering the length of time of the interrogation, 18 hours, brings into great question the voluntariness and the freeness of the confession. Mr. Fox stated that in the beginning of the questioning Mr. Hance denied everything, and only after 18 hours of constant interrogation did he finally sign a statement, and only after 18 hours of constant interrogation was he advised that he had an attorney seeking him. And by that time he had already made a statement and signed it.

We'd also ask the Court to consider as one of these factors that, at a subsequent date Mr. Hance completely repudiated the statement and said it was not true, it was based on being coerced by force to sign the statement, from physical and mental fatigue, that he had been deprived of food, any sustenance, he had been deprived of sleep, and that he was in great fear for his physical well-being, which brings into the factor of the methods being used during the interrogation. And we would suggest to the Court that the lack of the sleep, the small amount of food and drink, restraint from free bathroom privileges, the fact that two people constantly interrogated him over a period of time, that all these things should be considered in determining that he in fact was coereced or forced to make this confession and this statement. And, we feel that with all these things considered, as laid out in the case of

Williams versus the State, that the Court's ruling to admit the confession was not a proper ruling and should be reversed and the thing remanded for a new trial.

THE COURT: Would you like to address that?

MR. WILLIAM SMITH: May I have one moment, Your Honor?

THE COURT: Yes, sir.

MR. WILLIAM SMITH: Your Honor, of course, the transcript is here and available if the Court wishes to review it, or feel that it needs to on any of these particular points. Just one reference to, we would take exception to several of counsel's allegations on which his argument is based. He referred to 18 hours of constant interrogation. My recollection of the facts is contrary to that, that the man was not at any point in time interrogated for 18 consecutive hours.

THE COURT: Excuse me, I believe the phrase was a total of 18 hours.

MR. WILLIAM SMITH: Eighteen hours constantly was what I thought he said.

THE COURT: All right, sir.

MR. RICHARD SMITH: Your Honor, let me just clear it up and say that it was 10 hours one day and 8 hours the next, you're right, but it was a total.

MR. WILLIAM SMITH: Your Honor will recall the

facts and circumstances of the interrogation, and the transcript is here if Your Honor wishes to look at that.

Now, to address the matter of being held incommunicado, or being kept away from his attorney, an attorney who represented him and was trying to get in touch with him, if the Court wishes to review the testimony of Mr. David Clark, again it's in the transcript here and we'd be happy for the Court to look at it, at no time was Mr. Clark his attorney, at no time did he represent him in this matter, at no time had he been contacted by a member of the family to represent him in this matter. Mr. Clark's testimony was that he had represented Mr. Hance in a divorce matter at some time previously, that he read of the arrest in the paper and that he simply was trying to locate or get in touch with Mr. Hance on his own. And Mr. Clark's testimony was that he did not and does not try criminal cases, and that he never has represented the defendant in this case, and did not represent him at the time that he testified here.

The holding, on the other side of the fence, so to speak, the holding of the defendant incommunicado, I could not locate that specifically in the transcript. If the Court wishes to look at it we'll try to look it up, but my recollection that he was told when Mr. Clark did get in touch with the individuals who had him in their custody, military officials, that he was told that there was an attorney who

wanted to talk with him, and he said no, that he did not want to talk with the attorney. So, I do not believe that this constitutes holding one incommunicado, or from their attorney who represents them, or is retained by their family to represent them.

THE COURT: All right, if there's nothing further on that grounds, let's proceed to the matter of the venue.

MR. RICHARD SMITH: Your Honor, I would just briefly like to respond to Mr. Smith. Of course, as he says, the Court has the transcript. Mr. Clark had been his attorney and represented him in other matters and was carrying through, and I think Mr. Hance was advised Mr. Clark was looking for him after he had given his statement, and the police and the CID were aware of it long before the statement was given, and I think they at least had the burden to advise him that an attorney was trying to get in touch with him. Of course, we'll leave that to the Court to make its decision.

Mr. Alex Byars is going to address the question of venue.

MR. BYARS: Your Honor, in this particular case, I think the record reflects, from my reading of the record, in fact I'm certain that it does, that Mr. Smith, Mr. Rick O. Smith, representing Mr. Hance, made a motion for a directed verdict on the basis that venue was not proved in this case. Now, I was also informed by Mr. Smith that no particular

request to charge to it, a written request to charge, asking for a specific charge on the fact that the issue of venue must be proved beyond a reasonable doubt once it is put in issue, which I believe is the law, was given to the Court, but that Mr. Smith did make the motion for directed verdict, because the State failed to prove venue beyond reasonable doubt, and that it was an issue in this case. Now, the State's sole testimony in proving here that the venue was existent in this case is the testimony of Mr. James Webb, starting at page 493 of the transcript, and it is this testimony that I believe the State is relying on, it's the only testimony that I could find that was in the record, after reading the record, regarding as to whether or not this particular alleged crime of Mr. Hance occurred in Columbus, Muscogee County, Georgia.

If I may read to the Court just a short holding here out of the famous case of Parks versus the State, that citation is 212 Georgia 435, in that case the Supreme Court of Georgia held that proof of venue is part of the State's case, and a failure of the State to prove venue is cause for reversal. "This Court has many times held that venue is a jurisdictional fact and that it must be proved, and that the lack of sufficient evidence of venue is covered by the exception that the verdict is contrary to law and without evidence to support it."

In the case of Wilson versus the State, which is 6 Georgia Appeals 16, the Court of Appeals held that venue may be proved by circumstantial evidence with circumstances which show that it is possible the alleged crime was committed within the jurisdiction of the Court are insufficient to establish the jurisdictional evidence of venue, where, from the circumstances adduced it is as possible and reasonable that the crime was committed beyond the jurisdiction of the Court.

Your Honor, in this case, from my reading of quite a number of the cases, and due to the fact that Georgia has a Code Section, specifically 271103 that deals with boundary line cases, the importance of proper venue in this case cannot be underestimated inasmuch as the scene of the alleged crime, and where the body of Ms. Faison or Jackson was allegedly found happens to sit right on the boundary line of U. S. Government property. So, I think, if in fact the venue was not shown as we contend that it was not shown, this case would never, or possibly never should have been in the State Courts of Georgia, or the Superior Court of Georgia, and should have been perhaps tried under Federal jurisdiction, and we feel that for that reason we're not talking about just a mere case of where perhaps a body was found lying near a county line contiguous to another county line in the State of Georgia, but was found lying in an ambiguous area, possibly

on the Fort Benning reservation.

For that reason we think that not only have the cases held, interpreting the Georgia Constitution and the Statutes applying to venue forever and a day, that it's a jurisdictional fact required by the Constitution, and all legislative attempts to change that have been consistently reversed and overturned by the Georgia Supreme Court.

We also feel that, because of, as I just said, the fact that this alleged crime occurred in an area which is very possibly not in Muscogee County, Georgia, for that reason the burden was on the State to prove this beyond a reasonable doubt.

Now, going to the facts, after having cited a couple of these cases, and I won't go into citation upon citation of other cases, but I could furnish some other cases if the Court wants me to do so later, showing how important venue becomes when the issue is raised by the defense as it was by Mr. Smith in the course of the trial, and particularly here where we have a case where the crime possibly, if indeed there was one, was possibly committed not only just outside the jurisdiction of this county, but also outside the jurisdiction of the State of Georgia. So, I think it's highly crucial that the State have proved its case of venue beyond a reasonable doubt.

Your Honor, referring back to, as I was getting

ready to start into, about the testimony of Mr. James D. Webb, who is the City Engineer here in Columbus, Georgia, and I might add a mighty fine man and I think we all like him, but in this particular case on page 493 of the transcript and page 494, Mr. Smith, Mr. Bill Smith, that is, the District Attorney, asked on page 494, "Mr. Webb, were you shown a scene where a body was found by Agent Wanninger?"

Mr. Webb, in response to that question said, "Yes."

The next question by Mr. Smith was, "All right, is the point that you were shown where the body of Brenda Jackson, or Brenda Gail Faison, was found by Agent Wanninger, located in Muscogee County, Georgia?"

"Yes."

And number one, that is, his answer, Mr. Webb's answer to Mr. Smith's question, was based on hearsay, it was based on what Mr. Smith told him that Agent Wanninger told him about where the body was located. Mr. Webb never saw the body of the corpus delicti, or whatever you want to call it, he did not know where it was located, he was merely informed that that was where the body was located by what somebody else said. And, Your Honor, that being hearsay means that that has absolutely no probative value, the Court cannot even consider it, if there's no objection made it still has no probative value. And Mr. Webb's determination of venue being correct on the basis of where he was told

Mr. Wanninger said the body was can have absolutely no probative value and no venue was shown.

Furthermore, in Mr. Hance's cross-examination, even assuming that that did establish venue, Mr. Webb says, in response to a question by Mr. Hance, "Did you-- were there any measurements taken?"

This is also on page 494 of the transcript. "By walking, yes, step pacing."

Then Mr. Hance asked Mr. Webb, "I mean actual measurements."

Mr. Webb responded, "No actual measurements by taking, but by stepping."

Then the next question by Mr. Hance was, "So, you're saying-- well, how can you be sure that it's in Muscogee County when you didn't really get any-- you didn't make any measurements, you just made steps?"

Then Mr. Webb goes on into what a step normally is, and talking about the right of way of the reservation, and whatnot. He said he had been in this business long enough to know when he's gone 30 feet.

Your Honor, the whole-- and then in response to another question he said, he was asked how many times he had done it, and he said, "Once."

The State's case of venue rises or falls on Mr. James D. Webb's testimony. And, Your Honor, I would submit

that because the prerequisites for proof of venue in Georgia are so strict, and because the District Attorney has sought to prove his case based on hearsay testimony, which ultimately has no probative value and cannot even be considered by the Court, Mr. Webb did not see that body, it was where Mr. Webb was told that body was, and because the State builds its case of venue on Mr. Webb, and it's on something that has no probative value, Your Honor, I would say a new trial would have to be granted on that basis alone, even assuming arguendo that he did show it, although we strenuously contest that he didn't, it was an issue that was in fact.

And then, Your Honor, I would like to get into the fact that I think the Court, because venue was in issue should have made a specific charge on venue. Your Honor, the cases that I have read on venue the last few days have told me, or I have read them to say, that if the defense does not put venue into issue, and the State makes a showing of venue, then it is a matter for the Court to determine whether venue is shown, and at that point the State, excuse me, the Court, Your Honor, does not have to make a specific charge as to venue. And I think I can get you cases on this, Your Honor, if you want to see them.

However, if the defense raises the issue of venue and it becomes in issue, which Mr. Smith and Mr. Hance did

do, then a charge that venue is proved by the State beyond a reasonable doubt, just like every other element of the crime, has got to be shown, Your Honor, and a charge is in order specifically on the point of venue at that time.

And, Your Honor, referring back to your charge, I made notations on my copies of the transcript here, and just what manners and forms Muscogee County, or in any straying type way venue was mentioned in your charge, and, Your Honor, I respectfully submit to the Court that no specific charge as would be required was given. This is assuming, Your Honor, we're not, by me saying all this I am not coming back, or coming off of our position that they proved it at all, we think that a motion for new trial should be granted merely on the basis that it was proved by hearsay, nonprobative evidence, but this is just saying assuming arguendo that that was deemed by the Court, Your Honor, to have been shown by probative value evidence, which we say that it wasn't, that even then a motion for new trial should be granted because of the fact that it was not specifically charged by the Court, Your Honor.

Page 1080 of the transcript, two places there, Your Honor, you referred to, "in the County of Muscogee, in the State of Georgia," and that could possibly be construed as giving, or requiring proof of venue. Also the last paragraph on page 1082 there is also, you state that,

"Every element of the charge must be proved beyond a reasonable doubt." And, Your Honor, the only other mention possibly of venue in the charge by the Court is on page 1095, where again you did refer to "in the County of Muscogee, State of Georgia."

But, Your Honor, I would submit that even if this Court did deem the testimony of James D. Webb as being sufficient, although we highly and strenuously say that it is not sufficient as a matter of law, that even if the Court did make that determination that the charge on venue was insufficient, because the defense put in issue as to whether or not venue was proved beyond a reasonable doubt, and for that reason a specific charge as to venue alone should have been given to clarify that with the jury, and adding the particular importance with which venue does have in this case, since the site of the purported crime where the alleged corpus delicti was found could very easily have been on U. S. Government property, Your Honor.

MR. WILLIAM SMITH: Your Honor, venue is an essential element of every crime in Georgia, as the Court very well knows. It is my understanding of the law, I likewise do not have any, I think a general case was cited, but it's my understanding of the law that slight evidence of venue is sufficient. I would point out to the Court that the only evidence, and I underline the words "only

evidence," of venue is the testimony of James Webb, page 493 of the transcript of evidence. The reason I point this out is, counsel has stated that venue was put into issue by the defense, and I dispute this, that it was put into issue. There is absolutely no other evidence other than this man's testimony, who went to this scene where the body was found, and who swore in this Court under oath that this was in Muscogee County, Georgia.

Now, the defense brought in no one, neither the defendant himself, nor any other witness to give any evidence to the contrary, hence this is the only evidence, and merely the asking the Court to direct a verdict on venue I submit does not quote "put this matter in issue," there's no other evidence, this is the only evidence the Court passed on on this matter at the time of the directed verdict, this being the only evidence.

THE COURT: Did Agent Wanninger testify that he pointed out the spot to Mr. Webb and then later Mr. Webb said, "The spot pointed out to me by Agent Wanninger where the body was is in Muscogee County, Georgia"?

MR. WILLIAM SMITH: I do not recall that, Your Honor, he may have, he may not have, I don't know.

MR. RICHARD SMITH: Your Honor, if I may just make a couple of brief remarks to what Mr. Smith said, and I made in my argument. Number one, Your Honor, I think we did put it

an issue, but to ask the defendant to come in and prove, or show evidence that he committed a crime in another jurisdiction in order to put venue in issue would seem to me an absurdity, Your Honor, it's in issue because they didn't prove it, and we claim they didn't prove it. On page 1047, I mean, excuse me, 1037 of the transcript Mr. Smith, Mr. Rick Smith, made his objection at that point, Your Honor, and raised that he felt that a directed verdict should be given in favor of the defendant for failure to prove venue.

Your Honor, the only other thing I would add, is again, and I agree with Mr. Bill Smith on this, that the only evidence of venue was given by Mr. Webb, and his testimony, Your Honor, was based on what someone else told him as to where the corpus delicti was, the alleged corpus delicti, that is-- where the corpus delicti is is the determining factor of what venue takes place, Your Honor, where it is, what locale, and his testimony, based on what somebody told him as to where the corpus delicti was, is without probative value, it's hearsay, with or without objection, it is still without probative value and cannot even be considered by the Court, and since that is the only evidence as to venue, Your Honor, I think the motion for directed verdict should have been granted, and as to what the law is at this stage, whether we would be entitled to a new trial or what, but I think that if this Court finds at this point that venue was

not proved, that a motion for new trial would not be in order-- well, since we're the moving party it would be, motion for new trial would be in order, Your Honor. I think it wouldn't be double jeopardy since we're the moving party, but we would ask that it be granted.

THE COURT: All right, is there anything else?

MR. HANCE: Yes, sir, Your Honor, just one point, before the trial even came about, Your Honor, on December of '78, or the same week of the arrest, I wish the Court to take into consideration that the defendant here didn't receive a Recorder's Court hearing. That's all.

THE COURT: All right.

MR. RICHARD SMITH: That concludes our motion.

THE COURT: Taking the last of the grounds first, I do not believe that if it's true that a Recorder's Court hearing was not afforded to the defendant that it would be properly raised at this time. I don't really think it would have made any difference anyway, so if that is an additional ground for the motion for new trial it's overruled.

As to the venue, I'm certainly aware of the importance of proving venue in every case and certainly where there is a question so close as this is between the jurisdiction of the Federal Government and of the State of Georgia, but it appears to me, as it did at the trial, that there was evidence put in to show that a spot which had been

pointed out to the witness, Webb, and identified for him as the place where something happened, and he was asked, if he were asked where it was, and he said this was in Muscogee County, Georgia, is proof of that fact. It would then be an issue for the jury to determine whether or not it was in Muscogee County, Georgia.

As far as the specificity of the charge is concerned, I don't have the charge before me, but I do believe that I correctly charged the jury that every essential element of the crime must be proved, that they would have to believe that this took place in Muscogee County, Georgia, and therefore it was put before them to determine that, along with any other elements of the offense.

So, I will deny the new trial on the grounds that we have identified here as the question of venue.

With repect to the admission of the confession, I believe the proper steps were taken to determine whether it was admissible from all standpoints, and that the jury was allowed then to hear virtually all of that same evidence and were properly charged what they must find insofar as voluntariness, freeness, duress, coercion, reward, threat, and so forth, that again being a question of fact for them to decide, and they apparently resolved it for themselves in such a way as to, I should say, not to find against the State. And whether or not they considered the confession,

we don't know, we were not in the jury room with them, we presume they did consider the confession, as to what weight they might have given it we don't know, all we know is that the verdict was adverse to the defendant in the case. I think though, as a matter of law, the Court properly admitted into evidence the statement made by the defendant, and the Court also had heard all the evidence with respect to whether he was being held incommunicado, whether Mr. David Clark was trying to reach him, and for what purpose, the repudiation that the defendant is said to have made, the testimony with respect to furnishing him food and bathroom privileges. So, all in all, I think that these questions then also appeared before the jury and, as I say, they resolved them in favor of the State, and against the defendant. Therefore, the motion for new trial is denied.

I'll ask you, Mr. Byars, if you will continue to participate in the case, if it is the defendant's desire to appeal this decision, I wish that you would assist him. Mr. Smith, I hope that you will continue to do the good job that you've been doing also in the case. Is there anything further?

MR. RICHARD SMITH: That's all we have.

THE COURT: The Court stands recessed.

(COURT WAS ADJOURNED.)

CERTIFICATE OF REPORTER

STATE OF GEORGIA)

MUSCOGEE COUNTY)

I, PAULA E. NIXON, Official Court Reporter for the Chattahoochee Judicial Circuit, do hereby certify that the hearing in the case of State of Georgia versus William Henry Hance was heard on the 25th day of October, 1979, that I was authorized to and did report on a shorthand machine the proceedings and evidence in the said hearing, and that the foregoing pages, numbered 1 to 22 inclusive, constitute a true and correct transcription of my shorthand report of the proceedings of said cause.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 31st day of October, 1979, at Columbus, Muscogee County, Georgia.

Paula E. Nixon
Certified Court Reporter
Certificate No. A-411

GEORGIA, MUSCOGEE COUNTY
CLERK'S OFFICE, SUPERIOR COURT
FILED IN OFFICE
NOV 9 - 1979
Mike Miller
DEPUTY
CLERK SUPERIOR COURT

GEORGIA, MUSCOGEE COUNTY:

CLERK'S OFFICE SUPERIOR COURT:

I, James L. Stubbs, Clerk of the Superior Court of Muscogee County, Georgia, do hereby certify that the foregoing is the original copy of the reporter's transcript of the hearing on the Defendant's Motion for New Trial filed in this office.

Witness my signature and the seal of said court hereto affixed, this _____ day of January, 1980.

Clerk, Superior Court
Muscogee County, Georgia

Report of The Trial Judge

of the

Superior Court of Muscogee County, Georgia

The State vs. William H. Hance
(A case in which the death penalty was imposed)

A. Data Concerning the Defendant

1. Name Hance (Last,) William (First) Henry (Middle) 2. Date of Birth 11/10/51 (Mo. Day Ye

3. Social Security Number 226 74 1289

4. Sex: M [x] F [ ] 5. Marital Status: Never Married [ ] Married [ ] Divorced [x] Spouse Deceased [ ]

6. Children
(a) Number of children 1
(b) Ages of children: 1 2 (3) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18
(Circle age of each child)

7. Father living: yes [xx] no [ ] If deceased, give date of death _____

8. Mother living: yes [ ] no [x] If deceased, give date of death Nov., 197

9. Number of children born to parents 2

10. Education--Highest Grade Completed: 1 2 3 4 5 6 7 8 9 10 11 (12) 13 14 15 16 [college
(Circle one)

11. Intelligence Level: (IQ below 70) Low [ ]
(IQ 70 to 100) Medium [xx] 84
(IQ above 100) High [ ]

12. Psychiatric Evaluation Performed? Yes [x] No [ ]
If performed is defendant:
a. Able to distinguish right from wrong? [x] [ ]
b. Able to adhere to the right? [ ] [ ]
c. Able to cooperate intelligently in his own defense [x] [ ]

13. If examinedd, were character or behavior disorders found? Yes [x] No [ ]
(If answer is yes please elaborate) See 14

14. What other pertinent psychiatric [and psychological] information was reve

Good physical condition; dull-normal intelligence; anxious, depressed, apathetic; expressed feelings of worthlessness. No previous mental health contact. Not psychotic.

15. Prior Work Record of Defendant:

	Type Job	Pay	Dates Held	Reason for Termination
a.	U. S. Army - E4	$720/Month	Feb. '76 - Present	
b.	U. S. Marines - Sgt.	$680/Month	May '71 - Oct. '75	Attempt to Save Marriage
c.				
d.				
e.				

(A separate report must be submitted for each defendant sentenced to death

B. Data Concerning the Trial

1. Was the case tried with or without jury? With [xx] Without [ ]

2. How did the defendant plead? Guilty [ ] Not guilty [xx]

C. Offense Related Data

1. Capital Offense for Which Penalty Imposed:
   a. Treason.....[ ]
   b. Murder.....[xx]
   c. Kidnapping for Ransom.....[ ]
   d. Kidnapping where Injury Results.....[ ]
   e. Aircraft Hijacking.....[ ]
   f. Rape.....[ ]
   g. Armed Robbery.....[ ]

2. Were other offenses tried in the same trial? yes [xx] no [ ]

   If other offenses were tried in the same trial list those offenses.

   a. Criminal Attempt to Commit Theft by Extortion
   b. _____
   c. _____
   d. _____

3. If tried with jury, did the jury recommend the death sentence? Yes [xx] No [ ]

4. Statutory aggravating circumstances found: Yes [xx] No [ ]

5. Which of the following statutory aggravating circumstances were instruct and which were found?

	Instructed	Fou
a. (1) The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony, or	[ ]	[
(2) The offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions.	[ ]	[
b. (1) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in, the commission of another capital felony, or aggravated battery or	[ ]	[
(2) The offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree.	[ ]	[
c. The offender by his act of murder, armed robbery, or kidnaping knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be haz-	[ ]	[

	Instructed	Found
d. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value.	[ ]	[ ]
e. The murder of a judicial officer, former judicial officer, district attorney or solicitor or former district attorney or solicitor during or because of the exercise of his official duty.	[ ]	[ ]
f. The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.	[ ]	[ ]
g. The offense of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.	[xx]	[x]
h. The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.	[ ]	[ ]
i. The offense of murder was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement.	[ ]	[ ]
j. The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.	[ ]	[ ]

. List non statutory aggravating circumstances indicated by the evidence, if any.

a. _____

b. _____

c. _____

d _____

. Was there evidence of mitigating circumstances? Yes [ ] No [x]

. If so, which of the following mitigating circumstances was in evidence?

a. The defendant has no significant history of prior criminal activity.	[ ]
b. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.	[ ]
c. The victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.	[ ]
d. The murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct.	[ ]

f. The defendant acted under duress or under the domination of another person. [ ]

g. At the time of the murder, the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication. [ ]

h. The youth of the defendant at the time of the crime. [ ]

i. Other. [ ]
Please explain if (i) is checked _____

_____

_____

9. If tried with a jury, was the jury instructed to consider the circumstances indicated in 8 as mitigating circumstances? Yes [ ] No [xx]

10. Does the defendant's physical or mental condition call for special consideration? Yes [ ] No [xx]

11. Although the evidence suffices to sustain the verdict, does it foreclose all doubt respecting the defendant's guilt? Yes [x] No [ ]

12. Was the victim related by blood or marriage to defendant? Yes [ ] No

13. If answer is yes, what was the relationship? _____

_____

_____

14. Was the victim an employer or employee of defendant? No [xx]
Employer [ ]
Employee [ ]

15. Was the victim acquainted with the defendant? No [xx]
or Casual Acquaintance [xx]
Friend [ ]

16. Was the victim local resident or transient in the community? Resident [ ] (visitin
Transient [xx] Aunt, f
Miami)

17. Was the victim the same race as defendant? Yes [xx] No [ ]

18. Was the victim the same sex as the defendant? Yes [ ] No [xx]

19. Was the victim held hostage during the crime? No [xx]
Victim (prostitute) probably accompanied Defendant willingly to wooded scene. Yes - Less than an hour [ ]
Yes - More than an hour [ ]

20. Was the victim's reputation in the community: Good [ ]
Known prostitute (convicted) Bad [xx]
Unknown [ ]

21. Was the victim physically harmed or tortured? Yes [xx] No [ ]
If yes, state extent of harm or torture: Confession stated Defendant

2. What was the age of the victim? 21

3. If a weapon was used in commission of the crime was it?

No weapon used	[ ]
Poison	[ ]
Motor Vehicle	[ ]
Blunt Instrument	[xx]
Sharp Instrument	[ ]
Firearm	[ ]
Other _____	[ ]

4. Does the defendant have a record of prior convictions? Yes [ ] No [ ]
Given pre-trial probation 10 yrs. ago for assault on female w/ intent to maim.

5. If answer is yes, list the offenses, the dates of the offenses and the sentences imposed: (Lexington, V

Offense	Date of Offense	Sentence Imposed
a. Felonious & Malicious Wounding	Feb. 11, 1969	Pre-Trial Probation
b.		
c.		
d.		

6. Was there evidence the defendant was under the influence of narcotics or dangerous drugs at the time of the offense? Yes [ ] No [x]

7. Was the defendant a local resident or transient in the community?
Resident [x] Stationed at Ft. Benn
Transient [ ]

D. Representation of Defendant *

1. Date counsel secured April 14, 1978

2. How was counsel secured? a. Retained by defendant [ ]
b. Appointed by Court [xx]

3. If counsel was appointed by court was it because
a. Defendant unable to afford counsel? [x]
b. Defendant refused to secure counsel? [x]
c. Other (explain) Defendant insisted on his right to represent himself, but Public Defender was appointed to sit with Defendant, and advise him when requested. [x]

4. How many years has counsel practiced law? a. 0 to 5 [ ]
b. 5 to 10 [xx]
c. over 10 [ ]

5. What is the nature of counsel's practice? a. Mostly civil [ ]
b. General [ ]
c. Mostly criminal [xx]

6. Did the same counsel serve throughout the trial? Yes [xx] No [ ]

7. If not explain in detail. _____

E. General Considerations

1. Was race raised by the defense as an issue in the trial? Yes [ ] No [

2. Did race otherwise appear as an issue in the trial? Yes [ ] No [

3. What percentage of the population of your county is the same race as the defendant?

   a. Under 10%.....[ ]
   b. 10 to 25%.....[ ]
   c. 25 to 50%.....[x]
   d. 50 to 75%.....[ ]
   e. 75 to 90%.....[ ]
   f. Over 90%.....[ ]

4. Were members of defendant's race represented on the jury? Yes [xx] No [

5. If not, was there any evidence they were systematically excluded from the jury? Yes [ ] No [

6. Was the jury instructed to exclude race as an issue? Yes [ ] No [

7. Was there extensive publicity in the community concerning this case? Yes [xx] No [

8. Was the jury instructed to disregard such publicity? Yes [ ] No [

9. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence? Yes [ ] No [

10. Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes [ ] No [

11. If answer is yes, what was that evidence? _____

12. General comments of the Trial Judge concerning the appropriateness of the sentence imposed in this case The death penalty is appropriate under the evidence, which showed a vicious, unprovoked attack on the victim, resulting in most of her head being destroyed and removed.

F. Chronology of Case

		Elapsed Days
1.	Date of Offense Feb. 28, 1978	
2.	Date of Arrest April 5, 1978	

Date post-trial motions ruled on Nov. 30, 1979

Date Trial Judge's Report Completed December 18, 1979

*Date Received by Supreme Court _____

*Date Sentence Review Completed _____

*Total Elapsed Days _____

* To be completed by Supreme Court

This report was submitted to the defendant's counsel for such comments as he desired to make concerning the factual accuracy of the report, and

1. His comments are attached (X)
2. He stated he had no comments ( )
3. He has not responded ( )

8 January 1980
Date

Kenneth A. Fallaw
Judge, Superior Court of

Muscogee County

Richard O. Smith
ATTORNEY AT LAW

P.O. BOX 39
825 SECOND AVENUE
COLUMBUS, GEORGIA 31902
PHONE (404) 322-5531

January 7, 1980

Judge Kenneth Followill
Government Center
Columbus, Georgia

Re: William Henry Hance
Report of Trial Judge

Dear Judge Followill:

Please consider the following comments and attach them to your report of the Trial Judge.

1. Page 4 - #21: There is no evidence presented either in Defendant's statement or elsewhere that he intentionally broke the victim's arm. The arm was apparently inadvertently broken in trying to pull the body from one place to another.

2. Page 5 - #D-3: Attorney Walter Johnson also assisted the Defendant by appointment of the Court in this matter. He has practiced law from 5 to 10 years and his practice is general.

3. Page 1 - #13 and 14: Evidence was introduced at a pre-trial hearing to indicate that Dr. Lu Lieberman had examined Defendant at the Muscogee County Jail. Dr. Lieberman reported that there were some definite character disorders; however, Defendant specifically requested that the matter not be pursued any further.

Other than these observations, the remainder of the report seems to be in order. Thank you for the opportunity to examine this report.

Very truly yours,

RICHARD O. SMITH

ROS/md

GEORGIA, MUSCOGEE COUNTY:

CLERK'S OFFICE SUPERIOR COURT:

I, James L. Stubbs, Clerk of the Superior Court of Muscogee County, Georgia, do hereby certify that the foregoing is the original copy of the report of the trial judge filed in this office by the Honorable Kenneth B. Followill.

Witness my signature and the seal of said court hereto affixed, this _____ day of January, 1980.

_____
Clerk, Superior Court
Muscogee County, Georgia